

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

<p>LOBO WELL SERVICE, LLC, a Utah Limited Liability Company,</p> <p>Plaintiff,</p> <p>vs.</p> <p>MARION ENERGY, INC., a Texas Corporation</p> <p>Defendant.</p>	<p>MEMORANDUM DECISION AND ORDER DENYING DEFENDANT'S REQUEST FOR AN ADVISORY JURY</p> <p>Case No. 2:07-CV-273 TS</p>
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This matter is scheduled for trial beginning April 19, 2011. At the trial a jury will make factual determinations, but subsequent to the trial the Court will make equitable determinations. At the Final Pretrial Conference, held on April 8, 2011, Defendant requested that the jury be used in advisory role as to the equitable determinations. The requested the parties simultaneously brief the issue, and the briefs have been submitted.

It is clear from Fed.R.Civ.P. 39(c) that the Court has discretion in deciding whether to try an issue with an advisory jury. Defendant does not dispute this in its brief.¹ In exercising its discretion, the Court will not have the jury act in an advisory role.

The Court is concerned that both the parties in this matter are unnecessarily complicating and compounding the legal issues in this factually straightforward case. The Court is concerned that they will overwhelm the jury. The Court will not ask the jury to make determinations beyond those involving the claims, counterclaims, and affirmative defenses it must already consider. It is therefore

ORDERED that Defendant's request for an advisory jury is DENIED.

DATED April 14, 2011.

BY THE COURT:



TED STEWART
United States District Judge

¹Docket No. 290, at 6-8 (“Because Marion is seeking the assistance of the Court to determine whether Marion has the right to rescind any contracts between Lobo and Marion, [t]he Court must enter findings of fact and conclusions of law but may allow the jury to participate in an advisory role.”).